IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-04-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Crl.R.C.No. 1477 of 2004

K.Uma Rani ... Petitioner/P.W.1

-vs-

1. S.Ashok

2. T.D.Anitha

3. S.Vasanta Bai

4. M.Padmavathi

5. D.Amarendra

6. Inspector of Police
W2, All Women Police Station,
Adyar, Chennai . 20. ... Respondents/Accused 1 to 5 and Complainant

Criminal Revision filed against the Judgment, dated 12.03.2004 made in S.C.No.302 of 2003 on the file of the Additional Sessions Judge / FTC No.4, Chennai.

For petitioner : Mr.G.Jawaharlal

For respondents : Mr.V.Gopinath Senior Counsel for Mr.L.Mahendran for RR1, 3 and 4

Mr.V.S.Sivapandian for RR2 and 5

Mr.Hasan Mohamed Jinnah
Govt. Advocate (Crl.side) for R6

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O R D E R

This Criminal Revision is directed against the judgment of acquittal, dated 12.03.2004, made in S.C.No.302 of 2003 on the file of the Additional Sessions Judge / FTC No. 4, Chennai.

2. The respondents 1 to 5 are the accused before the trial court, facing charges under Sections 307, 323 and 506 (II) IPC. On the complaint given by the petitioner herein, who was the defacto complainant / P.W.1, the 6th respondent herein registered the case against the respondents 1 to 5. It is seen from the impugned judgment that P.Ws.1 to 10 were examined before the trial court, apart from marking Exs.P.1 to P.4.

3. The trial court, after considering the oral and documentary evidence and also the arguments advanced by both sides, held that the charges leveled against the respondents 1 to 5 have not been proved beyond reasonable doubt and accordingly, acquitted them from the charges. Against which, the petitioner herein has filed this criminal revision.

4. According to Mr. G.Jawaharlal, learned counsel appearing for the revision petitioner, the trial court has not considered the evidence of the prosecution witnesses properly, and the version of P.W.1 is corroborated by the evidence of P.W.3, the younger daughter of P.W.1. According to the learned counsel, the findings of the court below is against the evidence available on record.

5. It is settled proposition of law that in a revision against acquittal, unless there is manifest error of law or perverse finding, leading to miscarriage of justice, this Court cannot interfere with the finding of the court below.

6. Charges have been framed against the respondents 1 to 4 under Sections 307, 323 and 506 (II) IPC and against the 5th respondent under Section 506 (II) IPC.

7. It is not in dispute that the first respondent / A1 is the husband of the revision petitioner. The second respondent, Anitha was a student of the revision petitioner. Her brother is the 5th respondent. The third respondent is the mother of the first respondent and mother-in-law of the revision petitioner. That on 01.12.1979, the marriage between the revision petitioner and the first respondent was solemnized. According to the revision petitioner, she being a senior lecturer in a polytechnic, went to Canada to attend some training programme on 21.03.2001 and returned on 24.05.2001. Soon after, she returned from Canada, her second daughter informed her that the first respondent had married the second respondent, while she was in Canada. Admittedly, this case was not tried for the offence of Bigamy under Section 494 IPC. Therefore, the Court has to

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consider the evidence with reference to the charges framed against the accused under Sections 307, 323 and 506 (II) IPC.

8. Learned counsel appearing for the respondents 1, 3 and 4 drew the attention of this Court to the FIR, marked as Ex.P.4, wherein the date of the occurrence of the offence is stated as 27.04.2001, date of receiving the information is 02.07.2002 at 2 p.m. On the complaint given by the revision petitioner on 02.07.2002, the case was registered. The revision petitioner, who was examined as P.W.1 has deposed in her evidence that on 11.01.2001 at about 6.30 p.m, when she came out of the house, she found her husband coming in a Maruti Car. When she went nearby the car, the second respondent / A2 spitted on her, getting down from the car, beated the revision petitioner and on hearing her noise, her husband the first respondent by drowing the car attempted to hit her, but she escaped with minor injuries. According to her, she went inside the house and informed the same to her father-in-law and junior mother-in-law, but her father-in-law attempted to attack her by a chair. The aforesaid evidence was disbelieved by the trial court.

9. Considering the contradictory version and the delay in lodging the complaint, for the alleged offence that had taken place on 11.10.2001, there is no other evidence, except the oral version of the petitioner. There is no acceptable reason from the revision petitioner, for lodging a complaint on 02.07.2002, after a period of 9 months.

10. In the cross-examination, the petitioner has stated that the age of her father-in-law was about 80 years and few months after the occurrence, he died and that he was a diabetic patient and also having heart ailment, for which he was taking treatment in the hospital. She has admitted in her cross-examination that the age of A3 was 67 years. She has admitted that she arrayed her father-in-law also as one of the accused. Further, she has admitted that she was staying in the very same house, even after the alleged occurrence and she did not say anything about the occurrence even to her sisters. According to the revision petitioner, on 21.04.2002, when she was in the house, her husband, the first respondent scolded her and fisted on her face by hand and also beaten on her back.

11. Even as per the evidence of the revision petitioner, the allegation against the second respondent and A5 was with reference to the occurrence, that had taken place on 11.10.2001, but the complaint, Ex.P.1 was given and the case was registered only on 02.07.2002, 9 months after the occurrence, without any acceptable reason for the inordinate delay. She has further admitted that she continued to be in the same house, even after 21.04.2002 along with her husband, father-in-law and mother-in-law. Therefore, there is no allegation against the respondents 2 and 5 on the alleged occurrence that took place on 27.04.2002. P.W.2, Sathyamithra, daughter of the revision petitioner and the first respondent was a reporter of a magazine, working at Bangalore. According to her, her father, the first respondent herein was beating the revision petitioner, her mother in April 2002, but as per the FIR, there was no alleged

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occurrence in April 2002. According to P.W.3, Hasmitha, another daughter of the petitioner and the first respondent, on 21.04.2002, her father, the first respondent had beaten her mother, but she did not see the occurrence directly, hence her hearsay evidence was inadmissible, as per the Indian Evidence Act.

12. P.W.8, the doctor had deposed that on 22.04.2002, at about 01.05 p.m, he examined the revision petitioner and issued a copy of the accident register, Ex.P.3. According to him, he found some abrasion on the face of the revision petitioner, which would have been caused, while she was attacked by hand or even due to the scratch of her bangle.

13. It is not in dispute that the respondents 1 to 5 were prosecuted only for the charges punishable under Sections 307, 323 and 506 (II) IPC. As contended by the learned counsel for the respondents / accused, there is no specific overt act against the respondent 2 and 5 for the occurrence, said to have been taken place on 21.04.2002. Even, the alleged occurrence that had taken place on 11.10.2001, though the revision petitioner was residing along with A1, A3 and other family members, no complaint was lodged before the police, for about 9 months, for which there is no acceptable reason from the revision petitioner.

14. According to the learned counsel for the respondents, impleading the respondents 2 and 5 in this case would show that the case was filed with an ulterior motive of harassing the respondents 2 and 5. As found by the court below, the evidence of P.W.1, P.W.2 and P.W.3 are self contradictory. It is not sufficient to prove the guilt against the accused beyond reasonable doubt.

15. Had there been a threat to the life of the revision petitioner, as alleged by her, there could be no possibility for her, residing continuously in the same house along with the first respondent, A3 and other family members. Though the petitioner has admitted that the age of her father-in-law was about 80 years and he was a diabetic patient, suffering from heart ailment, she would state that he attempted to attack her by a chair. As held by the trial court, the evidence of P.W.1 is self contradictory and the same cannot be accepted, to base the conviction on the respondents 1 to 5 / accused.

16. I could find no manifest error of law or perverse finding, leading to miscarriage of justice, so as to interfere with the finding of the court below, in the criminal revision preferred against acquittal. Considering the facts and circumstances of this case, I am of the considered view that there is no error or illegality in the judgment of acquittal recorded by the court below and accordingly the criminal revision fails.

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17. In the result, confirming the judgment of acquittal rendered by the court below, the Criminal Revision is dismissed.

tsvn

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Additional Sessions Judge / FTC No.4, Chennai.

2. The Inspector of Police
W2, All Women Police Station,
Adyar, Chennai . 20.

3. The Public Prosecutor
High Court of Madras, Chennai.

+1 cc to Mr.G.Jawaharlal, Advocate Sr.No.29375.

NG(CO)
dcp/15.6.07 Crl.R.C.No.1477 of 2004

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